

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, NC
AUG 22 2013

NTN Corporation and NTN Bearing
Corporation of America,

Plaintiffs,

v.

Steve Thomas, Individually and America
Europa, Inc. and America Europa II, Inc. d/b/a
AE Inc.,

Defendants.

Civil Action No.: 3:13-cv-461

US District Court
Western District of NC

AMENDED EX PARTE SEIZURE ORDER

On August 14, 2013, the Court heard Plaintiffs' application for *ex parte* seizure order. The Court, after examining the sworn pleadings and the evidence attached, finds that Plaintiffs are entitled to an *ex parte* seizure order as set forth herein.

The Court finds an *ex parte* order is necessary without notice to Defendants, because there is insufficient time to give notice to Defendants, and hold a hearing before the immediate and irreparable harm of having counterfeit bearings containing the NTN Trademarks being sold and utilized in commerce, which would constitute a serious danger. The Court further finds that (1) Plaintiffs are the owner of numerous federal trademark registrations bearing the NTN trademark; (2) NTN bearings are utilized in a variety of heavy equipment and other industrial machinery; (3) the use of counterfeit bearings could have devastating consequences, causing potential damage to people and equipment; (4) Defendants are engaged in and/or otherwise involved in facilitating the ongoing commercial importation of counterfeit bearings containing the NTN ("Counterfeit Bearings") into the United States; (5) Defendants are likely warehousing

the Counterfeit Bearings at 2415 Tanglewood Lane, Charlotte, North Carolina, 28211, and (6) the bearings at issue are counterfeit.

The Court further finds that Plaintiffs have established a probable violation by Defendants of the Lanham Act, 15 U.S.C. §1114, *et seq.*, Tariff Act, 19 U.S.C. §1526(a) and North Carolina law. The Court further finds that (1) an order other than this *ex parte* seizure order is not adequate to achieve the purposes of 15 U.S.C. § 1114, *et seq.*; (2) the Plaintiffs have not publicized the requested seizure; (3) the Plaintiffs are likely to succeed in showing that the Defendants used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods; (4) an immediate and irreparable injury will occur if seizure is not ordered; (5) the goods to be seized are likely located at the place referred to in Plaintiffs' Complaint (2415 Tanglewood Lane, Charlotte, North Carolina, 28211); (6) the potential harm to Plaintiffs of denying the application outweighs the harm to the legitimate interests of Defendants if the order is granted; (7) Defendants and persons acting in concert with them would destroy, move, hide or otherwise make such goods inaccessible to the Court, if Plaintiffs were to proceed on notice to such person; and (8) Plaintiffs through their attorney, have given reasonable notice to the United States Attorney, Western District of North Carolina.

IT IS THEREFORE ORDERED that the United States Marshals Office, other Federal Law Enforcement officer or local law enforcement officer shall employ all reasonable means necessary to enter the premises at 2415 Tanglewood Lane, Charlotte, North Carolina, 28211 and to seize therefrom all bearings, boxes, paperwork, and documentation of any kind containing the NTN Trademarks or purporting to contain or relate to NTN bearings and the Counterfeit Bearings, and otherwise referred to as NTN bearings in Plaintiffs' Complaint. All such seized goods, records or other items shall be impounded in the custody or control of the United States

Marshals Service, other federal or local law enforcement officer, or plaintiffs or plaintiffs' agent as substitute custodian pending further order of this Court.

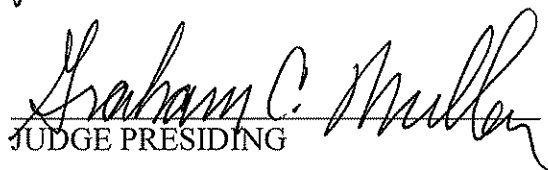
IT IS FURTHER ORDERED that plaintiffs' agents may accompany the United States Marshals Service or other law enforcement officers during the execution of this *ex parte* seizure order for purposes of inspecting and inventorying all items seized, including by photographing seized items.

IT IS FURTHER ORDERED that this *ex parte* seizure order is effective immediately. A bond for security is hereby set in the amount of \$2,500.

IT IS FURTHER ORDERED that the Defendants are hereby ordered to appear in person, before the Court in the Charles R. Jonas Federal Building at 401 West Trade Street, Courtroom 3, Charlotte, North Carolina, 28202, on September 5, 2013, at 2:00 pm. The purpose of the hearing is to determine whether the seized goods shall continue to be held by the United States Marshals Service, or other Federal Law Enforcement Officer or local law enforcement officer or plaintiffs' agents on behalf of this Court and whether the Court should make such other and further orders as requested for as may be deemed necessary and equitable.

IT IS FURTHER ORDERED that the United States Marshal, other Federal Law Enforcement Officer or local law enforcement officer shall serve a copy of this notice upon Defendants and all other individuals present at the location where the seizure takes place.

SIGNED this 22^d day of August, 2013, at 3:25 PM


JUDGE PRESIDING